



State of Connecticut  
DIVISION OF CRIMINAL JUSTICE

**TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE**

IN SUPPORT OF:

**H.B. NO. 6376 AN ACT CONCERNING CHILD PORNOGRAPHY**

JOINT COMMITTEE ON PUBLIC SAFETY AND SECURITY  
February 21, 2013

The Division of Criminal Justice respectfully requests the Committee's **JOINT FAVORABLE SUBSTITUTE REPORT** for **H.B. No. 6376, An Act Concerning Child Pornography**. This bill makes what is essentially a technical change to the child pornography statutes to reflect the latest advances in technology.

H.B. No. 6376 addresses the legal definition of what constitutes the "possession" of child pornography. It was not that long ago that the issue was not as complicated as it is today: possession meant that the perpetrator was in physical possession of physical materials, be it printed photographs, a magazine or a videotape or later a DVD. With the advent of computers, the internet and other advances in technology it is no longer the case that someone must physically be in possession of something in order to access child pornography.

Thus there is a gray area for those offenders who merely view child pornography images or videos online. Such viewers may not constructively "possess" the images or video under our existing statutes. If an offender is simply viewing – and not downloading and saving the images – the argument can be made that the image viewed is not within the dominion and control of the viewer but rather the creator of the website, who procures the content and manages the site.

This argument was recently found persuasive by the New York Court of Appeals when it concluded that evidence secured from the cache of a web browser that indicated that a person had *only viewed* child pornography on the web was not sufficient under the law to convict a person for Possessing a Sexual Performance by a Child. *People v. Kent*, 19 NY3d 290 (2012). In response New York recently criminalized such viewing by simply amending their penal code to change what constitutes the possession of child pornography.

The issue has been further complicated by the latest advance in technology known as "the cloud." Simply put, a cloud is a server or digital storage warehouse where space is allocated to a user to keep information or data that is immediately available for use. This allows a user to store files on the cloud and stop physically storing the user's file on his or her computer. Although these files are readily accessible by the user, he or she probably has no idea where the server that holds them is actually located. In fact, cloud servers are

usually outside the geographical jurisdiction where the computer user is located. More often than not the actual physical servers are located in another country. This, too, poses the same constructive possession difficulties as noted with regard to viewing rather than downloading and saving specific files. Additionally, there is the added legal question of whether the criminal possession occurred in a place where the court has geographical jurisdiction.

H.B. No. 6376 is intended to update Connecticut's child pornography statutes to reflect the advances in technology. The bill amends Section 53a-193 of the General Statutes (Obscenity and Related Offenses – Definitions) to revise the definition of "possess" to include "physical possession or otherwise to exercise dominion or control over tangible property, and includes to access visual depictions of child pornography in any format or location." This change is in no way intended to extend or expand the statute but merely to update the language to reflect means by which perpetrators may now gain access to child pornography, whether or not it is downloaded to a specific electronic device or viewed on the internet or the "cloud."

The Division would recommend one simple but significant amendment to the bill – to require that the individual "knowingly" accessed the material in question. This change is necessary to pass legal muster for a criminal statute. Accordingly, the Division of Criminal Justice respectfully requests the Committee's JOINT FAVORABLE SUBSTITUTE REPORT. We would be happy to provide any additional information the Committee might require or to answer any questions you might have. Thank you.